

ESTTA Tracking number: **ESTTA699780**

Filing date: **10/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	D.B.C. Corporation		
Entity	Corporation	Citizenship	Mississippi
Address	228 Industrial Drive North Madison, MS 39110 UNITED STATES		

Attorney information	Carla C. Calcagno Calcagno Law 1250 24th Street NW Suite 300 Washington, DC 20037 UNITED STATES cccalcagno@gmail.com,trademarks@canopyparalegal.com Phone:202 466-0544
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Registration Subject to Cancellation

Registration No	4732479	Registration date	05/05/2015
Registrant	Nucita Venezolana, C.A. Edificio Pastas Sindoni, Calle Intersan Maracay, Estado Aragua, VENEZUELA		

Goods/Services Subject to Cancellation


Class 030. First Use: 2014/12/00 First Use In Commerce: 2014/12/00
All goods and services in the class are cancelled, namely: Cookies

Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act section 2(d)
Related Proceedings	Petition To Cancel Registration No. 4732480 for PIRUCREAM STYLIZED, owned by same Respondent for same goods. ESTTA filing 699778 of today's date

Marks Cited by Petitioner as Basis for Cancellation


U.S. Registration No.	1296629	Application Date	12/04/1981
Registration Date	09/18/1984	Foreign Priority Date	NONE
Word Mark	PIROULINE		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1979/00/00 First Use In Commerce: 1981/06/00 Confectionary Goods-Namely, Wafer Sticks with Chocolate

U.S. Registration No.	1297882	Application Date	12/04/1981
Registration Date	09/25/1984	Foreign Priority Date	NONE
Word Mark	PIROULUXE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/00/00 First Use In Commerce: 1981/06/00 Confectionary Goods-Namely, Wafer Sticks		

U.S. Registration No.	4103090	Application Date	12/16/2010
Registration Date	02/21/2012	Foreign Priority Date	NONE
Word Mark	PIROUTWIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2011/12/01 First Use In Commerce: 2011/12/01 chocolates; confectionaries, namely, wafers, bakery goods, and cookies		

U.S. Registration No.	4671081	Application Date	06/05/2014
Registration Date	01/13/2015	Foreign Priority Date	NONE
Word Mark	PIROUCRISP		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2009/00/00 First Use In Commerce: 2009/00/00 Cookies and biscuits

U.S. Application No.	86666835	Application Date	06/18/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CRÃ#ME DE PIROULINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1990/00/00 First Use In Commerce: 1990/00/00 cookies and wafers		

Attachments	73340150#TMSN.png(bytes) 85199193#TMSN.png(bytes) 86301432#TMSN.png(bytes) 86666835#TMSN.png(bytes) Petition to Cancel PIRUCREAM REGISTRATION 4732479 pages 1-11.pdf(3133448 bytes) Petition to Cancel PIRUCREAM REGISTRATION 4732479 pages 12-29.pdf(4002711 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Carla C. Calcagno/
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Name	Carla C. Calcagno
Date	10/01/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

D.B.C. Corporation,)	Cancellation No. _____
)	
Petitioner,)	Marks: PIRUCREAM
)	
v.)	
)	Reg. Nos.: 4732479
Nucita Venezolana C.A.,)	
)	
Respondent.)	
)	

PETITION FOR CANCELLATION

Petitioner, D.B.C. Corporation, a Mississippi corporation with a business address of 228 Industrial Drive North, Madison, Mississippi 39110, believes it is being damaged by the continued registration of the mark PIRUCREAM in Standard Characters (“hereafter “PIRUCREAM”), Registration No. 4732479, in class 30 covering “cookies”, issued to a Venezuelan company, Nucita Venezolana C.A. (hereinafter, “Respondent” or “Nucita”). This registration was filed on November 11, 2013 based on intention to use. A statement of use was filed on February 12, 2015, claiming a first use and first use in commerce date of December 2014. The registration issued on May 5, 2015 (hereafter Respondent’s registration”) Petitioner requests cancellation of the same.

As grounds for this Petition, Petitioner alleges as follows:

1. Petitioner is an internationally renowned baker and manufacturer of baked goods. Through its predecessors in interest, Petitioner has manufactured and produced cookies, biscuits, and wafers for over 150 years.

2. Since at least as early as 1979, Petitioner, through its predecessors in interest, has manufactured, distributed and sold internationally, *inter alia*, confectionary products consisting of a rolled wafer, with and without crème and chocolate fillings. Petitioner's rolled wafer is displayed below



3. Internationally, since at least as early as 1979, Petitioner has sold these confectionary products under the mark PIROULINE, as well as under variations of the mark PIROULINE.

4. Since at least 1981, and well prior to both Respondent's filing date and first use of the mark PIRUCREAM, Petitioner, through its predecessors in interest, has extensively and continuously used, advertised and promoted its confectionary products under a family

of PIROU formative marks. This family consists of the root PIROU coupled with another recognizable word. These marks include PIROULINE, CRÈME DE PIROULINE, PIROULUXE, PIROUCRISP, and PIROUTWIST (hereafter the PIROULINE family of marks).

5. As set forth below, the first use dates of each of Petitioner's PIROULINE family of marks long precedes Respondent's filing and alleged first use date of the mark PIRUCREAM.

6. Since at least as early as 1981, Petitioner, through its predecessors in interest, has extensively used, advertised and promoted its PIROULINE and PIROULUXE brand confections throughout the United States.

7. Since at least as early as 1990, Petitioner has extensively used, advertised and promoted its CRÈME DE PIROULINE brand confections throughout the United States.

8. Since at least as early as 2009, Petitioner has extensively used, advertised and promoted its PIROUCRISP brand confections throughout the United States.

9. Since at least as early as 2011, Petitioner has extensively used, advertised and promoted its PIROUTWIST brand confections throughout the United States.

10. Petitioner owns the following U.S. Registrations for its PIROULINE family of marks ("hereafter Petitioner's registrations").

MARK	Registration No.	Filing Date	Issuance Date
PIROULINE	1296629	December 4, 1981	September 18, 1984

PIROULUXE	1297882	December 4, 1981	September 25, 1984
PIROUTWIST	4103090	December 16, 2010	February 21, 2012
PIROUCRISP	4671081	June 5, 2014	January 13, 2015

11. True and accurate copies of Registration Numbers 1296629, 1297882, 4103090 and 4671081 as obtained from the USPTO Database showing the current and accurate title and status of these registrations are attached hereto as Exhibit A-D.

12. Each of Petitioner's registrations listed in TABLE 1 above is valid and subsisting and, pursuant to Section 15 of the Lanham Act, 15 U.S.C. §1065, Registration Nos. 1296629 and 1297882 have become incontestable.

13. The filing dates listed in TABLE 1 above are each prior to the November 11, 2013 filing date and December 2014 first use dates alleged in Reg. No. 4732479 for the marks PIRUCREAM.

14. In addition to these registrations, Petitioner owns a pending U.S. application for CRÈME DE PIROULINE, Application Serial No 8666835, filed June 18, 2015. A copy of a printout from the TESS Database for that application is attached as Exhibit E.

15. Since well prior to Respondent's filing and first use of the mark PIRUCREAM, Petitioner has used, advertised and promoted the members of its PIROU family of marks together in such a way that the public associates not only the individual marks, but the aforementioned common characteristic of the family, with Petitioner, as indicative of a common origin of the goods.

16. As a result of its extensive and continuous and exclusive use of the PIROULINE family of marks, and the quality of its products, Petitioner's PIROULINE family of marks, both individually and collectively, have acquired extensive fame, renown and recognition in the United States market.

17. Despite Petitioner's prior rights, on November 11, 2013, Respondent, Nucita Venezolana C.A., filed two applications to register marks consisting of or including the term PIRUCREAM. These are: (1) Application Serial No. 86115244 for the mark PIRUCREAM in Stylized Form for "Cookies"; and (2) Application Serial No. 86115230 for the mark PIRUCREAM in Standard Characters for "Cookies" (hereafter "Respondent's Registrations" or "the PIRUCREAM Marks").

18. When filed on November 11, 2013, Application Serial Nos. 86115244 and 86115230 each were based on a bona fide intention to use the mark in commerce

19. On February 12, 2015, in each of Application Serial Nos. 86115244 and 86115230, Respondent filed a Statement of Use, claiming a date of first use and of first use in commerce of December 2014. Exhibit F is a true and accurate copy of the Specimen filed in both Applications.

20. Exhibit F contains a true and accurate depiction of Respondent's packaging for its product sold under the PIRUCREAM Marks in the United States.

21. The Respondent's packaging as shown in Exhibit F, reproduced here below, contains a true and accurate depiction of Respondent's product as sold and offered in the United States under the mark PIRUCREAM.



22. Respondent's product is an imitation of or closely related to Petitioner's PIROULINE and CRÈME DE PIROULINE confectionary products. Both Respondent and Petitioner offer rolled wafers. Both Respondent and Petitioner offer rolled wafers filled with a chocolate flavored cream.

23. Upon information and belief, Respondent's first use of any mark consisting of or including the term PIRUCREAM, anywhere, is no earlier than December 1, 2014.

24. Upon information and belief, Respondent's first use of any mark consisting of or including the term PIRUCREAM, in commerce with the United States, is no earlier than December 1, 2014.

25. Upon information and belief, Respondent's first use of any mark consisting of or including the term PIRUCREAM anywhere is no earlier than December 1, 2013.

26. Upon information and belief, Respondent's first use of any mark consisting of or including the term PIRUCREAM in commerce with the United States is no earlier than December 1, 2013.

27. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's U.S. registration for PIROULINE.

28. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's U.S. registration for PIROULUXE.

29. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's U.S. registration for PIROUTWIST.

30. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's U.S. registration for PIROUCRISP.

31. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products under the mark PIROULINE.

32. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products under the mark PIROULUXE.

33. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products under the mark PIROUTWIST.

34. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products under the mark PIROUCRISP.

35. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products under the mark CRÈME DE PIROULINE.

36. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products in the United States under the mark PIROULINE.

37. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products in the United States under the mark PIROULUXE.

38. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products in the United States under the mark PIROUTWIST.

39. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products in the United States under the mark PIROUCRISP.

40. Upon information and belief, Respondent did not adopt the mark PIRUCREAM until after it was aware of Petitioner's sale and/or advertising of products in the United States under the mark CRÈME DE PIROULINE.

41. Indeed, as a result of the parties' past and continuing dealings, Nucita was well aware of Petitioner, prior to the filing dates of Respondent's Registrations.

42. Indeed, as a result of the parties' past and continuing dealings, Nucita was well aware of Petitioner's claim of right to PIROULINE, prior to the filing dates of Respondent's Registrations.

43. Indeed, as a result of the parties' past and continuing dealings, Nucita was well aware of Petitioner's claim of right to CRÈME DE PIROULINE prior to the filing dates of Respondent's Registrations.

44. Indeed, as a result of the parties' past and continuing dealings, Nucita was well aware of Petitioner's family of PIROU marks, prior to the filing dates of Respondent's Registrations.

45. On May 7, 2009, Respondent filed Application Serial Number 77731071, under Section 1(b) of the Lanham Act, seeking to register the mark PIRULIN in Stylized Form for "cookies filled with chocolate cream". That application matured to Registration No. 4049693 in 2011.

46. On June 4, 2013, Petitioner filed a petition to cancel Registration No. 4049693 for the mark PIRULIN. The Board assigned this proceeding Cancellation No. 92057303.

47. In Cancellation No. 92057303, Petitioner alleged, among other things, that Respondent's PIRULIN mark was likely to cause confusion with Petitioner's mark PIROULINE, Registration No. 1296629.

48. On September 13, 2013, Dineff Trademark Law Limited entered an appearance on behalf of Respondent in Cancellation No. 92057303. Thereafter, the parties engaged in settlement discussions through their respective counsel.

49. These settlement discussions failed and on September 12, 2014, Petitioner served discovery upon Respondent. Rather than answer the discovery, Respondent's counsel withdrew, stating as follows:

Registrant has expressly instructed counsel for Registrant not to take further actions in this matter on its behalf. As a result, counsel for Registrant is no longer receiving directives from Registrant as to litigation decisions, strategy, and the like required to continue his representation in this matter

50. On March 5, 2015, judgment was entered against Nucita in that proceeding and subsequently Registration No. 4049693 for PIRULIN was cancelled.

51. On November 11, 2015, fully eight months after the TTAB judgment in favor of Petitioner in Cancellation No. 4049693, Respondent – through the same Dineff Trademark Law Limited firm - filed applications to register the PIRUCREAM Marks.

52. Upon information and belief, prior to its applications to register the PIRUCREAM Marks, Respondent was fully aware of Petitioner's registrations for the marks listed in TABLE 1 and of its prior use in the United States of the marks PIROULINE and CRÈME DE PIROULINE.

53. Nucita's adoption, use and registration of the mark PIRUCREAM is in bad faith and is an intentional effort to derive benefit from the well-established goodwill developed by Petitioner in the PIROULINE family of marks, including but not limited to the CRÈME DE PIROULINE and PIROULINE marks, through years of sales, advertising and promotion, and to create confusion and deception in the marketplace.

54. As a competitor in the cookie market and the junior user, Nucita is required to adopt a mark and name that has no resemblance whatsoever to the well-known mark PIROULINE family of marks, including but not limited to the marks CREME DE PIROULINE and PIROULINE.

55. Instead, Nucita has adopted a mark that is similar to, and is a play on several components of the PIROULINE family of marks, in sound, meaning, and connotation.

56. PIRUCREAM is an imitation of the well-known PIROULINE and CRÈME DE PIROULINE marks and Petitioner's well-known family of PIROU marks.

57. Respondent's cookies offered and/or sold under the PIRUCREAM mark are either identical to or closely related to Petitioner's wafers and cookies.

58. On information and belief, Exhibit G is a true and accurate copy of advertising distributed by or on behalf of Nucita in the United States on October 1, 2015 at <https://www.facebook.com/pirucreamusa>.

59. Exhibit G displays cookies in association with the name and mark PIRUCREAM. Instead, these are photographs of Petitioner's PIROULINE confectionary products.

60. PIRUCREAM is so similar to Petitioner's CRÈME DE PIROULINE and PIROULINE marks, that, when applied to identical and closely related goods, there is a likelihood of confusion, mistake or deception, from which damage to Petitioner is inevitable.

61. PIRUCREAM is so similar to Petitioner's PIROULINE family of marks, individually and collectively, that, when applied to Respondent's goods, consumers will

likely be confused, mistaken or deceived as to the source of the products, from which damage to Petitioner is inevitable.

62. In that Petitioner's rights in PIROULINE, CRÈME DE PIROULINE and the other "PIROULINE" family of marks are long prior to any date on which Respondent can rely in establishing priority in commerce in the United States, registration of PIRUCREAM should be barred under Section 2(d) of the Lanham Act. Therefore, Registration Nos. 4732479 should not remain on the register, and should be cancelled.

WHEREFORE, Petitioner prays that judgment be entered against Nucita, that this Petition be granted and that Registration No. 4732479 be cancelled.

October 1, 2015

/Carla C. Calcagno/
Carla Calcagno
Janet Ricciuti
CALCAGNO LAW PLLC
1250 24th Street N.W. Suite 300
Washington, D.C. 20037
202 466-0544

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Trademark Rule 2.119(d), a true copy of the foregoing PETITION FOR CANCELLATION was served this 1st day of October 2015, on the Domestic Representative of record for Registrant at the address for the Domestic Representative identified in the records of the United States Patent and Trademark Office, via first class mail, postage prepaid, to:

Laurel V. Dineff
Dineff Trademark Law Limited
160 N Wacker Dr
Chicago, Illinois 60606-1633

/Carla Calcagno/

EXHIBIT A



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PIROULINE

Word Mark	PIROULINE
Goods and Services	IC 030. US 046. G & S: Confectionary Goods-Namely, Wafer Sticks with Chocolate. FIRST USE: 19790000. FIRST USE IN COMMERCE: 19810600
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73340150
Filing Date	December 4, 1981
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 10, 1984
Registration Number	1296629
International Registration Number	1162300
Registration Date	September 18, 1984
Owner	(REGISTRANT) Farm and Food N.V. CORPORATION NETHERLANDS ANTIL 1800 Deposit Guaranty Plz. Jackson MISSISSIPPI 39201 (LAST LISTED OWNER) D.B.C. CORPORATION CORPORATION ASSIGNEE OF MISSISSIPPI P. O. BOX 456 MADISON MISSISSIPPI 39110
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Barbara A. Friedman
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130929.
Renewal	2ND RENEWAL 20130929
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	PIROULUXE
Goods and Services	IC 030. US 046. G & S: Confectionary Goods-Namely, Wafer Sticks. FIRST USE: 19790000. FIRST USE IN COMMERCE: 19810600
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73340154
Filing Date	December 4, 1981
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 17, 1984
Registration Number	1297882
Registration Date	September 25, 1984
Owner	(REGISTRANT) Farm and Food N.V. CORPORATION NETHERLANDS ANTIL 1800 Deposit Guaranty Plz. Jackson MISSISSIPPI 39201 (LAST LISTED OWNER) D.B.C. CORPORATION CORPORATION ASSIGNEE OF MISSISSIPPI P. O. BOX 456 MADISON MISSISSIPPI 39110
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Barbara A. Friedman
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140414.
Renewal	2ND RENEWAL 20140414
Live/Dead Indicator	LIVE

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PIROUTWIST

Word Mark	PIROUTWIST
Goods and Services	IC 030. US 046. G & S: chocolates; confectionaries, namely, wafers, bakery goods, and cookies. FIRST USE: 20111201. FIRST USE IN COMMERCE: 20111201
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85199193
Filing Date	December 16, 2010
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 17, 2011
Registration Number	4103090
Registration Date	February 21, 2012
Owner	(REGISTRANT) D. B. C. Corporation DBA DeBeukelaer Corp. CORPORATION MISSISSIPPI 228 Industrial Drive North Madison MISSISSIPPI 39110
Attorney of Record	Timothy A. Bush
Prior Registrations	1296629;1297882;1710279
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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PIROUCRISP

Word Mark	PIROUCRISP
Goods and Services	IC 030. US 046. G & S: Cookies and biscuits. FIRST USE: 20090000. FIRST USE IN COMMERCE: 20090000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86301432
Filing Date	June 5, 2014
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 28, 2014
Registration Number	4671081
Registration Date	January 13, 2015
Owner	(REGISTRANT) D. B. C. Corporation DBA DeBeukelaer Corp. CORPORATION MISSISSIPPI 228 Industrial Drive North Madison MISSISSIPPI 39110
Attorney of Record	Barbara A. Friedman
Prior Registrations	1296629;1297882;4103090
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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CRÈME DE PIROULINE

Word Mark
CRÈME DE PIROULINE
Translations

The English translation of "CRÈME DE" in the mark is "cream of".

Goods and Services

IC 030. US 046. G & S: cookies and wafers. FIRST USE: 19900000. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 00/00/1980. FIRST USE IN COMMERCE: 19900000

Standard Characters Claimed
Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

86666835

Filing Date

June 18, 2015

Current Basis

1A

Original Filing Basis

1A

Owner

(APPLICANT) D. B. C. Corporation DBA DeBeukelaer Corp. CORPORATION MISSISSIPPI 228 Industrial Drive North Madison MISSISSIPPI 39110

Attorney of Record

Barbara A. Friedman

Prior Registrations

1296629;1297882;4671081

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

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EXHIBIT F



EXHIBIT G

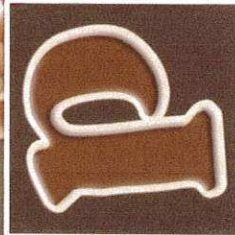


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